

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE HOOSICK FALLS PFOA CASES

This document relates to:

Reece, No. 1:19-cv-219; *Bamrick*, No. 1:19-cv-225; *Driscoll*, No. 1:19-cv-231; *Gates*, No. 1:19-cv-221; *Slowey*, No. 1:19-cv-216; *Webber*, No. 1:19-cv-220; and *Wyman*, No. 1:19-cv-215

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS PURSUANT TO FED. R. CIV. PRO. 12(b)(2)**

NOLAN HELLER KAUFFMAN LLP
Attorneys for Plaintiff
80 State Street, 11th Floor
Albany, New York 12207
(518) 449-3300

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	2
ARGUMENT	8
POINT I	10
SAINT-GOBAIN’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION MUST BE DENIED	10
A. The Pleadings and Evidence Regarding Saint-Gobain’s Rendering of Services to SGPP and “Presence” within the State is Sufficient to Establish That Saint-Gobain Is Subject to Personal Jurisdiction In New York	10
B. The Complaint, Publicly Available Documents, and Testimony Before the Court are Sufficient to Establish That SGPP Is the Alter Ego of Saint-Gobain For Purposes of Personal Jurisdiction.....	13
POINT II	15
IF THE COURT BELIEVES THAT PLAINTIFF’S OPPOSITION IS INSUFFICIENT, IT SHOULD AFFORD PLAINTIFF AN OPPORTUNITY TO CONDUCT JURISDICTIONAL DISCOVERY PRIOR TO RULING IN FAVOR OF DEFENDANT	15
POINT III.....	17
ALTERNATIVELY, PLAINTIFF SHOULD BE GRANTED LEAVE TO AMEND THE COMPLAINT IF THE COURT DEEMS THE PLEADINGS OF PERSONAL JURISDICTION, AS TO SAINT-GOBAIN, INADEQUATE.....	17
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases

<i>Am. Fuel Corp. v. Utah Energy Dev. Co.</i> , 122 F.3d 130 (2d Cir. 1997)	13
<i>Andy Stroud, Inc. v. Brown</i> , 2009 U.S. Dist. LEXIS 18725, at *2 n.2 (S.D.N.Y. Mar. 4, 2009)	9
<i>APWU v. Potter</i> , 343 F.3d 619 (2d Cir. 2003).....	16
<i>Ball v. Metallurgie Hoboken-Overpelt, S.A.</i> , 902 F.2d 194 (2d Cir. 1990).....	8
<i>Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez</i> , 171 F.3d 779 (2d Cir. 1999).....	11
<i>Benoit v. St.-Gobain Performance Plastics Corp.</i> , 2017 U.S. Dist. LEXIS 121734 (N.D.N.Y. Aug. 2, 2017)	17
<i>CutCo Indus. v. Naughton</i> , 806 F.2d 361 (2d Cir. 1986).....	16
<i>DiStefano v. Carozzi N Am., Inc.</i> , 286 F.3d 81 (2d Cir. 2001)	8
<i>Don King Prods., Inc. v. Haugen</i> , 1992 U.S. Dist. LEXIS 3074 (S.D.N.Y. Mar. 12, 1992)	8
<i>Dorchester Fin. Sec, Inc. v. Banco BRJ, S.A.</i> , 722 F.3d 81 (2d Cir. 2013)	9
<i>Enigma Software Grp. USA, LLC v. Malwarebytes Inc.</i> , 260 F. Supp. 3d 401 (S.D.N.Y. 2017)	8
<i>Foman v. Davis</i> , 371 U.S. 178 (1962)	17
<i>Global Network Commc'ns, Inc. v. City of New York</i> , 458 F.3d 150 (2d Cir. 2006)	8
<i>Hoffritz for Cutlery, Inc. v. Amajac Ltd.</i> , 763 F.2d 55 (2d Cir. 1985).....	8
<i>Impulse Mktg. Grp., Inc. v. Nat'l Small Bus. All., Inc.</i> , 2007 U.S. Dist. LEXIS 42725 (S.D.N.Y. June 11, 2007)	16
<i>In re Magnetic Audiotape Antitrust Litig.</i> , 334 F.3d 204 (2d Cir. 2003).....	15, 16
<i>In'l Equity Invs., Inc. v. Opportunity Equity Partners, Ltd.</i> , 475 F. Supp. 2d 456 (S.D.N.Y. Mar. 1 2007)	13
<i>Kernan v. Kurz-Hastings, Inc.</i> , 175 F.3d 236 (2d Cir. 1999)	8
<i>Koehler v. Bank of Bermuda Ltd.</i> , 101 F.3d 863 (2d Cir. 1996)	16
<i>Lechner v. Marco-Domo Internationales Interieur GmbH</i> , 2005 U.S. Dist. LEXIS 4022 (S.D.N.Y. Mar. 14, 2005)	16
<i>Leon v. Shmukler</i> , 992 F. Supp.2d 179 (E.D.N.Y. Jan. 17, 2014)	8, 15, 16
<i>Micro Fines Recycling Owego, LLC v. Ferrex Eng'g, Ltd.</i> , 2019 U.S. Dist. LEXIS 67981 (N.D.N.Y. Apr. 22, 2019).....	11, 13
<i>Minholz v. Lockheed Martin Corp.</i> , 227 F. Supp. 3d 249 (N.D.N.Y. 2016)	9, 10, 15, 16
<i>Northrop Grumman Overseas Serv. Corp. v. Banco Wiese Sudameris</i> , 2004 U.S. Dist. LEXIS 19614 (S.D.N.Y. Sep. 29, 2004).....	8
<i>Robert Diaz Assocs. Enters. v. Elete, Inc.</i> , 2004 U.S. Dist. LEXIS 8620 (S.D.N.Y. 2004).....	10

<i>S. New England Tel. Co. v. Glob. NAPs Inc.</i> , 624 F.3d 123 (2d Cir. 2010)	13
<i>Subaru Distribs. Corp. v. Subaru of Am., Inc.</i> , 425 F.3d 119 (2d Cir. 2005)	8
<i>Whitaker v. American Telecasting, Inc.</i> , 261 F.3d 196 (2d Cir. 2001)	9
<i>Wiwa v. Royal Dutch Petroleum Co.</i> , 226 F.3d 88 (2d Cir. 2000)	10

Statutes

15 U.S.C. § 2607(e).	3
----------------------------	---

Rules

Fed. R. Civ. Pro. 12(b)(2)	passim
Fed. R. Civ. Pro. 12(b)(6)	9
Fed. R. Civ. Pro. 15(a)(2)	17
Fed. R. Civ. Pro. 30(b)(6)	4, 10
N.Y. C.P.L.R. 301	1, 9, 10
N.Y. C.P.L.R. 302	1, 9, 11

Sealed Memorandum of Law

[Portions of this document have been identified as confidential by Defendant Saint-Gobain Performance Plastics Corporation and/or Defendant Saint-Gobain Corporation. As such, this document has been omitted from filing pursuant to Sections IV. B and VI. A of the Stipulated Protective Order of Confidentiality, "So-Ordered" on February 21, 2018, pending a Decision on Plaintiff's Application to File Under Seal]

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant, Saint-Gobain Corporation's motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) together with such other and further relief as the Court deems just and proper.

Dated: July 18, 2019
Albany, New York

NOLAN HELLER KAUFFMAN, LLP

By: /s/ David A. Engel
David A. Engel, Esq.
Bar Roll Number 105288
Attorneys for Plaintiff
80 State Street, 11th Floor
Albany, New York 12207
(518) 449-3300
dengel@nhkllp.com

Richard A. Burger, Esq.
Bar Roll Number 519605
80 State Street, 11th Floor
Albany, New York 12207
(518) 449-3300
rburger@nhkllp.com